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IN THE

Supreme Court of the United States

JOSE FRANCISCO SOSA,

Petitioner,

v.

HUMBERTO ALVAREZ-MACHAIN, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF AMICI CURIAE SURVIVING FAMILY MEMBERS OF THE VICTIMS OF THE SEPTEMBER 11, 2001 TERRORIST ATTACKS IN SUPPORT OF RESPONDENTS

PENNY M. VENETIS
Counsel of Record
Rutgers Constitutional Litigation Clinic
123 Washington St.
Newark, New Jersey 07102
(973) 353-5687

Counsel for Amici Curiae

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INTEREST OF THE AMICI CURIAE[1]

The undersigned *amici curiae* are surviving family members of the victims of the terrorist attacks on the United States of September 11, 2001.[2] The *amici curiae* wish to ensure that every survivor of terrorist attacks, and the family members of those who perish in terrorist attacks, regardless of their nationality, are able to pursue civil suits against terrorists. As such, the victims of the September 11th attacks and their surviving family members believe that this Court should interpret the Alien Tort Claims Act, 28 U.S.C. § 1350 (2003) ("ATCA"), consistent with the lower federal courts, as creating both a cause of action and granting jurisdiction to federal courts. Any other interpretation would be patently unjust to foreign nationals harmed by terrorist attacks.

On September 11, 2001, four commercial airliners were hijacked by the terrorist group Al Qaeda. The terrorists crashed two of the hijacked airplanes into the Twin Towers of the World Trade Center in New York City. Several minutes later, they crashed the third hijacked airplane into the Pentagon in Washington D.C. N.R. Kleinfeld, *U.S. Attacked: Hijacked Jets Destroy Twin Towers and Hit Pentagon in Day of Terror,* N.Y. TIMES, Sept. 12, 2001, at A1. The fourth hijacked airplane, believed to be aimed at another government target in Washington, D.C., crashed in a field in Pennsylvania after passengers wrestled control of the plane from the hijackers. James Risen & David Johnston, *A*

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1. No counsel for any party authored this brief either in whole or in part, and no persons other than counsel for the amici made any monetary contributions to its preparation or submission. The written consent of the parties to the filing of this brief have been filed with the Clerk.

2. For a list of the *amici* and the family members that were killed in the attacks, see the attached appendix. Any mention of other victims or their families in the brief does not imply their support of it.

Nation Challenged: The Pennsylvania Crash; 44 Victims are Remembered, and Lauded, N.Y. TIMES, Sept. 18, 2001, at B11.

The world watched in horror as the three buildings burned and the Twin Towers collapsed. *See* Kleinfeld, *supra*, at A1. For weeks following the attacks, rescue workers searched and searched for survivors, but only five were found. Dan Barry, *After the Attacks: The Tally; With No Miracle in the Rubble, Hope Shifts Grimly to Acceptance*, N.Y. TIMES, Sept. 17, 2001, at A12. The remains of many of those missing were never recovered. *See September 11th Victims List, at* http://66.223.12.161/september11victims/victims_list.htm._The clean-up effort took eight-and-a-half months to complete. Charlie LeDuff, *Last Steel Column from the Ground Zero Rubble is Cut Down*, N.Y. TIMES, May 29, 2002, at B3. During that time, workers spent twenty-four hours each day, including Thanksgiving, Christmas, and New Years Day, cleaning up the rubble and searching for human remains. *See* Mason Anderson, *Ground Zero Crews Find Relief at Red Cross, at* http://www.disasterrelief.org/disasters/020205groundzero.

The scope and severity of the September 11th terrorist attacks were articulated by President Bush, who declared that:

> [c]ivilized people around the world denounce the evildoers who devised and executed these terrible attacks. Justice demands that those who helped or harbored the terrorists be punished -- and punished severely. The enormity of their evil demands it. We will use all the resources of the United States and our cooperating friends and allies to pursue those responsible for this evil, until justice is done.

National Day of Prayer and Remembrance for the Victims of the Terrorist Attacks on September 11th, 2001: A Proclamation, available at http://www.whitehouse.gov/news/releases/2001/09/ 20010913-7.html.

Subsequently, the U.S. destroyed Al Qaeda's training camps in Afghanistan, and waged war against that country's ruling Taliban regime which provided cover for Al Qaeda. *See Presidential Address to the Nation*, October 7, 2001, *available at* http://www.whitehouse.gov/news/releases/2001/10/20011007-8.html. The U.S. Congress passed sweeping anti-terrorism legislation aimed at the interception and obstruction of terrorist activities, USA PATRIOT Act of 2001, 115 Stat. 272, Pub. L. 107-56 (2001), and established a cabinet-level Department of Homeland Security devoted to the protection of American soil from future terrorist attacks. Homeland Security Act of 2002, Pub. L. 107-296 (H.R. 5005). *See also* President George W. Bush, Remarks at the Signing of the PATRIOT Act (Oct. 26, 2001), *reprinted in President Bush Signs Anti-Terrorism Bill, available at* http://www.whitehouse.gov/news/releases/2001/10/20011026-5.html; Statement by the President (Nov. 19, 2002), *reprinted in President Hails Passage of Homeland Security Legislation, at* http://www.whitehouse.gov/news/releases/2002/11/20021119-4.html.

Approximately 2,996 innocent people died on September 11, 2001.[3] *See* September 11th Victims List, *at* http://66.223.12.161/september11victims/victims_list.html. Most of the victims were U.S. nationals. Among the dead,

3. Many of those missing were never recovered or identified, as they were believed to be undocumented immigrants with no formal personnel records, and whose families, for various reasons, were frightened to come forward. Steven Greenhouse & Mireya Navarro, *After the Attacks: The Hidden Victims; Those at the Towers' Margins Elude List of Missing*, N.Y. TIMES, Sept. 17, 2001, at A11; Somini Sengupta, *I.N.S. Urges Immigrants to Report the Missing*, N.Y. TIMES, Oct. 6, 2001, at D4.

however, were at least 209 foreign nationals.[4] As most of the known victims of the World Trade Center attacks were men in their 30's and 40's, many of them married, the number of pregnant women widowed by the attacks was "believed to be substantial." Mireya Navarro, *A Nation Challenged: The Families; Waiting for Babies Who Will Never Know Their Father*, N.Y. TIMES, Dec. 5, 2001, at B1.

The economic impact of the attacks was especially dire for those who lost their sole means of financial support in the attacks. For example, among those who perished in the Twin Towers were more than seventy food workers who worked at Windows on the World, the restaurant at the top of one of the Twin Towers, whose staff was noted for its "United Nations-like diversity." Shaila K. Dewan, *A Nation Challenged: The Memorials; For the Families, A Chance to Share Tears and Love*, N.Y. TIMES, Oct. 2, 2001, at B1. Their pursuit of the American dream was cut short by the cold-blooded acts of the terrorists. Steven Greenhouse, *A Nation Challenged: Windows on the World; a Showpiece's Survivors Wonder What to do Now*, N.Y. TIMES, Sept. 21, 2001, at B12. Peruvian national, Ivhan Luis Carpio Bautista turned 25 on September 11, 2001. He was so determined to support his family in Peru that he worked as much overtime as he could, even on his birthday. Mr. Carpio Bautista perished in the attacks. Glenn Collins, *A Nation Challenged: The Missing; As Providers, Friends, and Shoulders to Lean On, They Put Others First*, N.Y. TIMES, Sept. 26, 2001, at

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4. Many of those lost were nationals of other countries, including: Australia, Belgium, Brazil, China, Colombia, Ecuador, Phillippines, France, Germany, Ghana, Guyana, Haiti, Honduras, India, Indonesia, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Lebanon, Lithuania, Mexico, Moldova, New Zealand, Nigeria, Peru, Portugal, Russia, Sweden, Taiwan, United Kingdom, Ukraine, Uzbekistan, Venezuela, *September 11th Victims: Victims by Country and Citizenship, at* http://66.223.12.161/september11Victims/COUNTRY_CITIZENSHIP.htm; Sarah Prestwood, *'I'd Rather Have My Husband Back'*, WELLINGTON DOMINION, Sept. 28, 2001, at 9.

B11. Leobardo Lopez Pascual, who worked mornings at Windows on the World, sent money, clothes, and shoes to his wife and four children in Mexico, while he shared a studio apartment with a co-worker. He too perished in the attacks. *Id.* Sophia Addo, another Windows on the World employee, sent hundreds of dollars to her native Ghana each month to support her parents and ten-year-old daughter. *Id.* She too perished in the attacks. These three victims were just a few of the workers who lived paycheck-to-paycheck to support their families. The families of these workers and others like them should be permitted to use the ATCA to sue Al Qaeda for their loss.

Al Qaeda's net worth is not known. *See* Council on Foreign Relations, *The Money: Drying Up the Funds for Terror, in* COUNCIL ON FOREIGN RELATIONS: TERRORISM QUESTIONS AND ANSWERS, *at* http://cfrterrorism.org/responses/money.html. It is known, however, that chief among its sources of financial support is Osama Bin Laden's own personal wealth, believed to be as much as $300 million. *Id.* Some of Al Qaeda's money also comes from wealthy sympathizers who use sophisticated techniques to camouflage the flow of their own assets to Al Qaeda. *Id.* Al Qaeda has also made broad use of illegal activities such as extortion, drug smuggling, and fraudulent charity operations to draw money into its coffers. *Id.* It has also relied on a wide variety of legitimate economic activities to provide cover for its funding of terrorist acts. For example, Al Qaeda has used both the Yemeni honey trade and the traditional *hawala* system of informal community trust banking to both raise money and surreptitiously transfer funds worldwide. *Id.*

It was a terrorist cell of nineteen Al Qaeda operatives that perpetrated the attacks on September 11, 2001. That terrorist cell used $500,000 to pay for false identities, flight-school tuition and, eventually, plane tickets to board the hijacked aircraft. *Id.* This cost is less than a fraction of Al

Qaeda's resources, but arguably more than some victims' families will ever own.

Alien victims of the attack suffered as much as nationals; their families feel the same loss. It is therefore imperative that all of the families of the victims of the September 11th attacks be permitted to pursue suits against Al Qaeda and its vast financial resources.[5] Such lawsuits will not only potentially provide financial compensation to the victims' families, but will also provide a sense of vindication to the family members of the men and women who were murdered on September 11th.

Moreover, to win the war on terror, the United States, and all governments, must take all necessary steps to "cripple terrorist organizations and stem the flow of funds." MAURICE GREENBERG ET AL., TERRORIST FINANCING: REPORT OF AN INDEPENDENT TASK FORCE SPONSORED BY THE COUNCIL ON FOREIGN RELATIONS 34 (2002). Independent lawsuits by victims of terrorist acts can be extremely helpful to the government (which has limited resources) in its effort to track down terrorists and their sources of funding.

SUMMARY OF THE ARGUMENT

The *amici* respectfully request that this Court affirm the Ninth Circuit Court of Appeals' holding that the Alien Tort Claims Act, 28 U.S.C. § 1350, creates a cause of action to sue for a violation of the law of nations. *Alvarez-Machain v. United States*, 331 F.3d 604, 612 (9th Cir. 2003), *cert. granted* 124 S. Ct. 807 (2003).[6] Federal courts over the past twenty-five years have repeatedly and consistently held that ATCA confers on foreign victims of torts a right to sue for violations of the law of nations. *See e.g., Filartiga v. Pena-Irala*, 630 F.2d 876, 884-86 (2d Cir. 1980); *Abebe-Jira v. Negewo*, 72 F.3d 844, 848 (11th Cir. 1996).

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5. Although a number of funds have been established to assist families and survivors of the September 11th attacks, the compensation provided by these funds is inadequate. The federally-funded September 11th Victims Compensation Fund of 2001 was established to provide families of victims and survivors with the opportunity to receive support through financial installments rated to the expected earnings of the deceased or injured over the course of his or her natural lifetime. *September 11th Victim Compensation Fund Frequently Asked Questions, available at* http://www.usdoj.gov/ victimcompensation/faq.html (last updated Feb. 10, 2004). While claimants to this Fund waive right to take suit against the airlines, the United States, or any other non-terrorist entity involved in the attacks, *September 11th Victims Compensation Fund General Program Information: Q&A's Regarding Lawsuits Against Terrorist Conspiracy Participants, available at* http://www.usdoj.gov/victimcompensation /lawsuit_qa.html (last updated May 8, 2003), participation in the fund is no bar to pursuing suits against the terrorist who perpetuated the September 11th attacks.

However, the compensation fund is not without its drawbacks, especially for poorer victims. Because the amount of compensation is tied to the expected earnings of the deceased over the course of their natural lifetime, families of victims who earned less money at the time of the attacks will receive less money in compensation through the Fund. *September 11th Victims Compensation Fund Award Payment Statistics, available at* http://www.usdoj.gov/ victimscompensation/payments_deceased.html (last updated Feb. 25, 2004). Additionally, the deadline for participation in the fund passed on December 22, 2003. *Victims Compensation Fund Frequently Asked Questions, supra*. It is reported that nearly half of those eligible for compensation never applied for a claim. David W. Chen, *As Deadline for 9/11 Aid Nears, Many Relatives Haven't Filed*, N.Y. TIMES, Nov. 22, 2003, at A1. There was confusion over the deadline, the filing time was lengthy and victims' families were simply not emotionally ready to handle the process of filing. *Id.* Though several members of Congress cited this as a major problem, the deadline was never extended, leaving thousands of deserving claimants out in the cold. *Id.*

6. This Court also granted certiorari in the companion case *United States v. Alvarez-Machain*, 124 S. Ct. 821 (2003).

The *amici*, family members of victims who were killed by terrorists on September 11th, believe that the ATCA provides the only meaningful opportunity for foreign nationals who are victims of terrorism, and survivors of those victims, to be compensated monetarily. Permitting victims to sue terrorists civilly for their heinous acts also provides a sense of vindication for terrorism victims and their survivors. The U.S. should avail itself of all means to cripple and eradicate terrorism, including permitting alien victims to sue terrorists and to use their private resources to track down terrorists and their assets.

Amici submit this brief in direct response to the briefs submitted by the Solicitor General and the Petitioner who argue that the ATCA somehow impedes the war on terrorism, and that terrorists could manipulate the ATCA to sue the U.S., U.S. officials, and their allies. Br. for the U.S. at 52-53, Br. for Pet. at 38-39. This argument is baseless. First, the U.S. and other sovereign nations are immune from suit under the ATCA. *Sanchez-Espinoza v. Reagan*, 770 F.2d 202, 206-07 (D.C. Cir. 1985); The Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 (2003). Second, because Congress has mandated that a "principal goal" of U.S. foreign policy is to "promote the increased observance of internationally recognized human rights by all countries," 22 U.S.C. § 2304(a)(1) (2003), it is presumed that the United States, in fighting the war on terrorism, will abide by the law of nations and respect human rights. Finally, U.S. military actions cannot be challenged in federal courts, as they are non-justiciable political questions. *Eminete v. Johnson*, 361 F.2d 73 (D.C. Cir. 1966), *cert. denied*, 385 U.S. 929 (1966).

Congress has had the opportunity to review and repeal the ATCA many times, including, most recently, in the wake of the September 11th attacks when it reorganized our government (creating the Department of Homeland Security), and enacted the comprehensive USA PATRIOT Act. Pub. L.

107-56, 115 Stat. 272 (2001). Had Congress believed that any statute, including the ATCA, could impede the war on terrorism, it would have repealed that statute when it overhauled our laws.

Whereas U.S. citizens may sue terrorists for treble damages pursuant to U.S. statutory law if they are harmed by terrorist attacks, *see* 18 U.S.C. §§ 2331 *et seq.* (2003) (The Antiterrorism Act of 1992), this avenue is foreclosed to foreign nationals. As the U.S. District Court for the District of Columbia recently held, however, foreign nationals may invoke the ATCA to sue terrorists if their acts violate well-recognized norms of customary international law. *Burnett v. Al Baraka Inv. & Dev. Corp.*, 274 F. Supp. 2d 86, 99-100 (D.D.C. 2003) (holding that alien survivors of victims of the September 11th terrorist attacks can sue Al Qaeda because hijacking violates well-established norms of customary international law).

Judicially repealing the ATCA would create two classes of terrorism victims and their survivors: those who can sue for a violation of their rights and those who cannot. Repeal of the ATCA would mean that aliens injured by terrorist attacks within the U.S. could not sue those terrorists. It would also mean that aliens injured by terrorist attacks abroad could not sue terrorists living within our borders. Such disparate treatment of alien victims of terrorist attacks trivializes their suffering and signals that they do not deserve justice.

This dichotomy would not only harm the alien victims and their survivors, but would also call into serious question the U.S.'s moral stature in leading the global fight to eradicate terrorism. It simply cannot be perceived by our allies in the war against terrorism that the U.S. does not wish to protect the interests of their nationals. This would be exactly the kind of result that the ATCA was enacted to prevent.

ARGUMENT

I. THE UNITED STATES, WHICH IS AT THE FOREFRONT OF FIGHTING TERRORISM, SHOULD ENSURE THAT ALL VICTIMS OF TERRORISM ARE ABLE TO SUE TERRORISTS IN U.S. COURTS.

The United States and the international community have a long history of condemning and fighting terrorism. Even before the September 11th attacks, Congress ratified treaties and enacted legislation aimed at fighting international terrorism. By doing so, the United States has established that "[t]he war on terrorism remains our first priority." Colin Powell, *What We Will Do in 2004*, N.Y. TIMES, Jan. 1, 2004, at A25.

In 1998, the United States and seventy-five other nations ratified the International Convention for the Suppression of Terrorist Bombings ("Terrorist Bombings Convention"), *reprinted in* 37 I.L.M. 249 (1998). In 2002, Congress passed legislation implementing the Convention. Pub. L. 107-197, 116 Stat. 721 (H.R. 3275) (codified as 18 U.S.C. § 2332f (2003)). In 1999, the United States joined sixty-four other nations in ratifying the International Convention for the Suppression of the Financing of Terrorism ("Terrorist Financing Convention"), *reprinted in* 39 I.L.M. 270 (1999). In addition, thirty years before the attacks on the Pentagon and World Trade Center, the United States played a leading role in passing the Convention for the Suppression of Unlawful Seizure of Aircraft (Hijacking) ("Hague Convention of 1970"), 22 U.S.T. 1641 (1970).

Moreover, under the Omnibus Diplomatic Security and Antiterrorism Act ("ODSAA") of 1986, Congress established extraterritorial criminal jurisdiction for acts of

international terrorism against Americans. Pub. L. 99-399, 100 Stat. 853 (H.R. 4151) (codified as amended in 18 U.S.C. § 2332 (2003)). Upon signing the ODSAA into law, President Ronald Reagan declared that "[t]his mark[ed] yet another step forward in our bipartisan effort to eradicate international terrorism." Statement by President Ronald Reagan (Aug. 27, 1986), *reprinted in* 1986 U.S.C.C.A.N. 1965. President Reagan urged cooperation with all nations to bring an end to terrorism, and stated that "we must remain resolute in our commitment to confront this criminal behavior in every way." *Id.*

A few years later, believing that there was a need for a companion civil legal cause of action for U.S. victims of terrorism, the Judiciary Committee recommended the adoption of the Antiterrorism Act of 1992, to provide a federal cause of action for treble damages for any national of the United States injured by an act of international terrorism.[7] Pub. L. 102-572, 106 Stat. 4506 (S 1569) (codified at 18 U.S.C. § 2333 (2003)). When the legislation was passed, President George H.W. Bush stated that he was "pleased that . . . an American national [will be allowed] to file suit in the United States for the recovery of treble damages against the perpetrators of international terrorism." Statement by President George H.W. Bush (Oct. 29, 1992), *reprinted in* 1992 U.S.C.C.A.N. 3942.

In 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act ("AEDPA"), Pub. L. 144-132,

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7. The U.S. District Court for the Southern District of New York recently found that the September 11th terrorist attacks were acts of "international terrorism" as contemplated by this statute, even though the attacks took place entirely within the United States. *See Smith v. Islamic Emirate of Afghanistan*, 262 F. Supp. 2d 217, 225-26 (S.D.N.Y. 2003). The District Court reasoned that the attacks were international in nature because they were carried out by foreign nationals who received their orders, funding, and some training from foreign sources.

110 Stat. 1214 (S 735), to further deter terrorism. President Bill Clinton declared that "[b]y enacting this legislation, the United States remain[ed] in the forefront of the international effort to fight terrorism through tougher laws and resolute enforcement." Statement by President William J. Clinton (Apr. 24, 1996), *reprinted in* 1996 U.S.C.C.A.N. 961-1. Under the AEDPA, Congress waived portions of the Foreign Sovereign Immunities Act of 1976, under specified circumstances, to permit suits in U.S. courts by U.S. citizens against foreign states that engage in acts of terrorism. 28 U.S.C. § 1605(a)(7)(2003). The legislative history shows that Congress enacted the AEDPA to ensure that terrorists restore their victims to their prior state of well-being. S. Rep. 104-179 at 12, *reprinted in* 1996 U.S.C.C.A.N. 924, 931.

Since September 11th, the United States has been at the forefront of the world-wide effort to combat terrorism. First, the U.S. has made significant efforts to combat terrorism within our own borders. We have restructured our own government, creating a new Department of Homeland Security to monitor terrorism and other activities that threaten national security. Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135 (H.R. 5005) (codified primarily at 6 U.S.C. § 101 (2003)). In addition, the United States Congress passed the USA PATRIOT Act "to deter and punish terrorist attacks in the United States and around the world" and "to enhance law enforcement investigatory tools." Pub. L. 107-56, 115 Stat. 272 (H.R. 3162) (codified as amended in scattered sections of titles 8, 18, 22, 28, 31, 42, 47, and 50 of the U.S. Code).

Second, the United States has worked with and encouraged other nations to condemn terrorism

internationally.[8] The U.S. adopted United Nations General Assembly Resolutions which demand that all States cooperate to fight terrorism. For example, United Nations General Assembly Resolution 58/48, "*Calls upon* all Member States to support international efforts to prevent terrorists from acquiring weapons of mass destruction and their means of delivery."[9] Moreover, at the urging of the U.S., the September 11th terrorist attacks, and terrorist attacks on the UN Assistance Mission for Iraq in Baghdad on August 19,

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8. *See, e.g.*, G.A. Res. 54/110, U.N. GAOR, 54th Sess., U.N. Doc. A/RES/54/110 (2000); G.A. Res. 54/164, U.N. GAOR, 54th Sess., U.N. Doc. A/RES/54/164 (2000); G.A. Res. 55/158, U.N. GAOR, 55th Sess., U.N. Doc. A/RES/55/158 (2001).

9. This strong opposition to terrorism is also illustrated in UN General Assembly Resolutions. In various resolutions bearing essentially the same title, ("Measures to Prevent International Terrorism"), the UN has called for states to take measures against international terrorism when that terrorism "endangers or takes innocent human lives or jeopardizes fundamental freedoms." *See* G.A. Res. 3034(XXVII), U.N. GAOR, 27th Sess., U.N. Doc. A/RES/3034(XXVII) (1972); G.A. Res. 31/102, U.N. GAOR, 31st Sess., U.N. Doc. A/RES/31/101 (1976); G.A. Res. 32/147, U.N. GAOR, 32d Sess., U.N. Doc. A/RES/32/147 (1977); G.A. Res. 34/145, U.N. GAOR, 34th Sess., U.N. Doc. A/RES/34/145 (1979); G.A. Res. 36/109, U.N. GAOR, 36th Sess., U.N. Doc. A/RES/36/109 (1981); G.A. Res. 38/130, U.N. GAOR, 38th Sess. U.N. Doc. A/RES/38/130 (1983); G.A. Res. 39/159, U.N. GAOR, 39th Sess., U.N. Doc A/RES/39/159 (1984); G.A. Res. 40/61, U.N. GAOR, 40th Sess., U.N. Doc A/RES/40/61 (1985); G.A. Res. 42/159, U.N. GAOR, 42d Sess., U.N. Doc. A/RES/42/159 (1987); G.A. Res. 44/29, U.N. GAOR, 44th Sess., U.N. Doc. A/RES/44/29 (1989). Similarly, UN Member States have reaffirmed their "unequivocal condemnation" of acts of terrorism, including those that "may jeopardize the security of States." *See* G.A. Res. 49/60, U.N. GAOR, 49th Sess., U.N. Doc. A/RES/49/60 (1995). *See also* G.A. Res. 49/185, U.N. GAOR, 49th Sess., U.N. Doc. A/RES/49/185 (1995) (condemning acts of terrorism "aimed at the destruction of human rights"); G.A. Res. 58/81, U.N. GAOR, 58th Sess., U.N. Doc. A/RES/58/81 (2004) (reaffirming "strong condemnation of the heinous acts of terrorism that have caused loss of human life, destruction, and damage").

2003 were strongly condemned as acts of terrorism in UN resolutions 56/1 and 57/338 respectively. Secretary of State Colin Powell later described the UN's ratification of 56/1 as "the world answer[ing] President Bush's call for a great global coalition against terrorism." Remarks to Security Council of the United Nations (Sept. 11, 2002), *available at* http://www.state.gov/secretary/rm/2002/13407.htm. The General Assembly's strong condemnation of these terrorist acts has been reiterated in subsequent resolutions, in which the United States has reaffirmed its "strong condemnation of the heinous acts of terrorism that have caused enormous loss of human life, destruction, and damage." *See* G.A. Res. 57/27, U.N. GAOR, 57th Sess., U.N. Doc. A/RES/57/27 (2003) and G.A. Res. 58/81, U.N. GAOR, 58th Sess., U.N. Doc. A/RES/58/81 (2004).

The U.S.'s condemnation of terrorism is also demonstrated through its funding appropriations. The U.S. has provided significant financial support to international organizations to support their efforts in combating terrorism.[10] Further, the U.S. has sent delegates to participate in international organizations that work to combat terrorism.[11] The U.S.-led international war on terrorism

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10. In January, 2004, the U.S. delegation to the Organization of American States Inter-American Committee Against Terrorism pledged $1.6 million to support the fight against terrorism. Press Release, *U.S. Pledges $1.6 million to the Inter-American Committee Against Terrorism* (Jan. 22, 2004), *at* http://www.state.gov/r/pa/prs/ps/2004/28661.htm.

11. The Department of State declared that sending its Coordinator for Counterterrorism to the Organization of American States Inter-American Committee Against Terrorism "reflects [the U.S.'s] continued commitment to developing a hemispheric strategy to improve security and combat terrorism." Press Release, *Ambassador Cofer Black to Lead the U.S. Delegation to the Fourth Regular Session of the Inter-American Committee Against Terrorism* (Jan. 22, 2004), *available at* http://www.state.gov/r/pa/prs/ps/2004/28429.htm.

strongly reflects the U.S.'s dedication to human rights. Yet, the Petitioner and his amici ask this Court to judicially repeal the very statute that affords aliens the only redress against human rights abuses, including terrorism. This frustrates our national goals and interests and calls into question our moral ability to effectively lead the international war against terror. In keeping with our government's strong objective to fight and end terrorism, all victims of terrorism, regardless of their nationality should be able to sue terrorists and recover monetary damages.

II. TO COMBAT TERRORISM MOST EFFECTIVELY, AND IN KEEPING WITH CONGRESSIONAL INTENT, VICTIMS OF TERRORISM SHOULD HAVE ACCESS TO U.S. COURTS, REGARDLESS OF THEIR NATIONALITY.

As the September 11th attacks showed, terrorist acts against the United States result in death or injury to foreign nationals as well as U.S. citizens. Under our domestic law, American citizens may seek redress through tort actions against terrorists. The Antiterrorism Act of 1992 ("ATA"), 18 U.S.C. §§ 2331 *et seq.* (2003), permits American citizens who were injured "by reason of an act of international terrorism" to bring suit "in any appropriate district court of the United States" and recover treble damages against terrorists. *See also Boim v. Quranic Literacy Inst.*, 291 F.3d 1000, 1021 (7th Cir. 2002) (those who knowingly finance a terrorist group may be liable); *Pugh v. Socialist People's Libyan Arab Jamahiriya*, 290 F. Supp. 2d 94 (D.D.C. 2003) (action by survivors of airline bombing victims against Libyan officials who "conspired and succeeded in destroying a civilian commercial aircraft filled to capacity with innocent and unsuspecting passengers" may stand). Congress enacted

the ATA in 1992, twelve years after the Second Circuit held in *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980), that the ATCA provides aliens with a cause of action to sue for a violation of U.S. treaties or the law of nations. By 1992, numerous federal courts had adopted this analysis. *See e.g., Sanchez-Espinoza v. Reagan*, 770 F.2d 202, 207 n.5 (D.C. Cir. 1985); *Forti v. Suarez-Mason*, 762 F. Supp. 2d 1531, 1539 (N.D. Cal. 1987).

It is highly laudable that Congress has passed legislation to protect U.S. citizens against terrorism and deter this "violation of the law of nations." Br. for the U.S. at 28 n.6. Such legislation, however, provides no parallel access to U.S. courts for aliens who have been victimized, even when the terrorist attack occurs in the United States. Thus, it is only through the ATCA (which Congress was certainly aware of when it passed the ATA) that aliens may seek redress for terrorist attacks.

Should this Court reverse the nearly twenty-five years of law granting a federal forum to aliens who suffered grave human rights abuses, two classes of victims of terrorist acts will exist: those who may vindicate their rights, and those who may not. That dichotomy would be patently unfair and grossly unjust. Nothing can compensate the alien victims of terrorism for their loss, but this Court should permit their universal human rights to be vindicated through the only means available to them at this time.

A. The ATCA Affords Foreign Nationals Who Are Victims of Terrorism the Only Meaningful Opportunity to Vindicate Their Rights and Recover Damages.

The ATCA gives foreign nationals the only meaningful opportunity to collect for money damages against acts of terrorism in the U.S. courts. Although there is no universally recognized definition of "terrorism,"[12] *see United States v. Yousef*, 327 F.3d 56, 106-07 (2d Cir. 2003); *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774, 795 (D.C. Cir. 1984) (Edwards, J., concurring), certain acts of terrorists, particularly the acts committed by Al Qaeda members on September 11th, have long been recognized by U.S. courts as violating accepted norms of customary international law. *See Burnett v. Al Baraka Inv. & Dev. Corp.*, 274 F. Supp. 2d 86, 99-100 (D.D.C. 2003).

Plaintiffs in *Burnett*, survivors of the alien victims of September 11th attacks, among others, filed suit "to hold accountable the persons and entities that funded and supported . . . al Qaeda." 274 F. Supp. 2d at 99-100. Ruling in accordance with the great majority of federal courts, the district court denied the defendants' motion to dismiss and found that the ATCA creates a cause of action. *Id.* at 99. The court also held that plaintiffs satisfied the third element of the ATCA claim, that the "tort is committed in violation of the law of nations or a treaty of the United States." *Id.* at 99-100.

Specifically, the *Burnett* court found that "the September 11 attacks began with the hijacking of four

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12. Because customary international law is ever-evolving, *see Filartiga*, 630 F.2d at 880, as nations of the world unite to combat terrorism, U.S. courts may eventually conclude that "terrorism" violates established norms of customary international law.

airplanes, and aircraft hijacking is generally recognized as a violation of international law of the type that gives rise to individual liability" under ATCA. *Id.* at 100 (citing *Bigio v. Coca-Cola Co.*, 239 F.3d 440, 447-48 (2d Cir. 2000); *Kadic v. Karadzic*, 70 F.3d 232, 240 (2d Cir.1996); *Doe v. Islamic Salvation Front*, 257 F. Supp. 2d 115, 120 (D.D.C. 2003); *Presbyterian Church of Sudan v. Talisman*, 244 F. Supp. 2d 289, 309 (S.D.N.Y. 2003); *Abdullah v. Pfizer, Inc.*, No. 01CIV8118, 2002 WL 31082956, at *4 (S.D.N.Y. Sept. 17, 2002)); *see also* RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 404 (1987) ("A state has jurisdiction to define and prescribe punishment for certain offenses recognized by the community of nations as of universal concern, such as piracy, slave trade, attacks on or hijacking of aircraft, genocide, war crimes, and perhaps certain acts of terrorism. . . ."); *United States v. Yunis*, 924 F.2d 1086, 1092 (D.C. Cir. 1991) ("Aircraft hijacking may well be one of the few crimes so clearly condemned under the law of nations that states may assert universal jurisdiction to bring offenders to justice, even when the state has no territorial connection to the hijacking and its citizens are not involved." (internal citations omitted)).

The *Burnett* court reaffirmed the principle that "[t]he ATCA may be applied to certain actions of private, non-state actors." 274 F. Supp. 2d at 100 n.9 (citing *Sanchez-Espinoza*, 770 F.2d at 206). Airline hijacking is one of a very limited number of such actions, as it is almost never committed by a state actor. The fact that the attacks of September 11th were committed by private persons is thus irrelevant to the terrorists' liability under the ATCA. *See Burnett*, 274 F. Supp. 2d at 100.

The terrorists' egregious acts on September 11th also violated other long-recognized norms of customary international law. The international community has reached a general consensus that the acts of Al Qaeda on September

11th were a crime against humanity. As Mary Robinson (the U.N. Commissioner for Human Rights at the time of the attacks) remarked: the September 11th attacks on the United States were "an attack on the rule of law, democracy and human rights," constituting "a crime against humanity." Wendy S. Ross, U.S. Dep't of State, *Sept. 11 Attacks Were Crimes Against Humanity, Says UNHCR's Robinson* (Oct. 17, 2001), *at* http://usinfo.state.gov/topical/pol/terror/01101706.htm. Benjamin Ferencz, the former U.S. Chief Prosecutor at the Nuremberg war crimes trials, condemned the attacks of September 11th as "clearly a crime against humanity . . . because it is deliberate and intentional killing of large numbers of civilians for political or other purposes." Interview by World Online with Benjamin Ferencz (Sept. 19, 2001), *at* http://www.ratical.org/ratville/CAH/cahCAH.html. *See also* Human Rights Watch, Human Rights News, *September 11: One Year On: A Message to the Human Rights Community* (Sept. 9, 2002), *at* http://www.hrw.org/press/ 2002/09/sept11.htm ("The September 11 attacks were a crime against humanity that flouted the fundamental values of international human rights and humanitarian law."); William A. Schabas, *Punishment of Non-State Actors in Non-international Armed Conflict*, 26 FORDHAM INT'L L.J. 907, 923 (2003).

Since the post-World War II Nuremberg trials of Nazi criminals, crimes against humanity have been recognized to encompass: "murder . . . or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the law of the country where perpetrated." *United States v. Flick*, 6 Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10, 1200 (1952) (quoting Control Council Law No. 10, art. II). "[T]he ruling of the Nuremberg Tribunal memorialized the recognition of 'crimes against humanity' as customary international law." *Estate of Cabello v. Fernandez-Larios*,

157 F. Supp. 2d 1345, 1360 (S.D. Fla. 2001) (citing *Princz v. Federal Republic of Germany*, 26 F.3d 1166, 1173 (D.C. Cir. 1994)). As such, crimes against humanity are actionable under the ATCA. *See Kadic*, 70 F.3d at 236; *Princz*, 26 F.3d at 1182-83; *Estate of Cabello*, 157 F.Supp.2d at 1360; *Flores v. Southern Peru Copper Corp.*, 343 F.3d 140, 156 (2d Cir. 2003) (citing BRIGADIER GENERAL TELFORD TAYLOR, U.S.A., CHIEF OF COUNSEL FOR WAR CRIMES, FINAL REPORT TO THE SECRETARY OF THE ARMY ON THE NUERNBERG WAR CRIMES TRIALS UNDER CONTROL COUNCIL LAW NO. 10 109 (Aug. 15, 1949) (William S. Hein & Co., Inc. 1997) ("[C]ertain 'crimes against humanity' are proscribed by customary international law in part because of '[t]he force of circumstance' and 'the grim fact of worldwide interdependence.'")).

The Rome Statute of the International Criminal Court provides that a "crime against humanity" is any of certain enumerated acts prohibited by international law, including murder and torture, "when committed as part of a *widespread or systematic* attack directed against any civilian population, with knowledge of the attack." U.N. Doc. A/CONF.183/9 (1998), art. 7 (emphasis added). Federal courts have adopted this definition. *See Mehinovic v. Vuckovic*, 198 F. Supp. 2d 1322, 1353 (N.D. Ga. 2002) (invoking the language of the Rome Statute in a suit brought under ATCA and TVPA by Bosnian torture victims); *see also Tachione v. Mugabe*, 169 F. Supp. 2d 259, 279 n.76 (S.D.N.Y. 2001); *Iwanowa v. Ford Motor Co.*, 67 F. Supp. 2d 424, 440 (D.N.J. 1999). Clearly, the September 11th attacks meet this standard.

Importantly, in *Kadic*, the Second Circuit held that crimes against humanity do not require state action.[13] 70

13. Additionally, the International Criminal Tribunal for the Former Yugoslavia expressly reaffirmed the principle of individual responsibility for crimes against humanity under international law:

F.3d at 236 (following the customary international law invoked by the U.S. at Nuremberg); *see also* Control Council Law No. 10, art. II(2) (Prohibition against crimes against humanity applies to "[a]ny person, without regard to . . . the capacity in which he acted."); *In re Krupp and Others*, 15 I.L.R. 620, 626-27 (U.S. Milit. Trib. Nuremberg 1948) (private individuals liable for crimes against humanity); *In re Krauch and Others (I.G. Farben Trial)*, 15 I.L.R. 668, 678-79 (U.S. Milit. Trib. Nuremberg 1949).

B. The ATCA Is a Powerful Tool for the United States in its War Against Terrorist Organizations.

Terrorist groups such as Al Qaeda need vast resources to finance their attacks. *See* GREENBERG ET AL., *supra*, at 34. Crippling the financial networks which allow terrorist groups

> [t]he principle of individual responsibility and punishment for crimes under international law recognized at Nuremberg is the cornerstone of international criminal law. This principle which is the enduring legacy of the Nuremberg Charter and Judgment which gives meaning to the prohibition of crimes under international law by ensuring that the individuals who commit such crimes incur responsibility and are liable to punishment.

Prosecutor v. Dusko Tadic, 36 I.L.M. 908, 947 (1997). International law does not require a crime against humanity to be both widespread *and* systematic. *Id.* at 942 (emphasis added). One of these alternatives suffices to meet the requisites of the "directed against a civilian population" prong. *Id.* The Tribunal also noted that crimes against humanity could be committed "in a systematic manner or on a large scale." *Id.* The "large scale" requirement is "sufficiently broad to cover various situations involving multiplicity of victims, for example, as a result of the cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude." *Id.* at 943.

to operate is essential to preventing future attacks. The ATCA is key to this effort, as it enables alien victims of terrorist attacks to sue their attackers and anyone who financially supported the attacks. The ATCA also provides alien victims with an incentive to assist the U.S. and our allies in investigating and dismantling Al Qaeda's financial networks.

The Petitioner and the Solicitor General argue baselessly that terrorists could invoke the ATCA to sue the United States, its officials, or our nation's allies in the war on terrorism. Br. for Pet. 38-39, Br. for the U.S. at 52-53. It is a gross distortion of the law to argue that the ATCA somehow impedes the war on terrorism. First, the United States and other sovereign nations are immune from suit under the ATCA. *Sanchez-Espinoza*, 770 F.2d at 207; The Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 (2003). Second, because Congress has mandated that "a principal goal" of United States foreign policy "shall be to promote the increased observance of internationally recognized human rights by all countries," 22 U.S.C. § 2304(a)(1) (2003), it is presumed that the United States, in fighting the war on terrorism (either through its own agents and officers or those of friendly nations), will respect human rights and abide by the law of nations.[14] Third, military actions of the United States cannot be challenged in federal courts as they are non-justiciable political questions. *Eminente v. Johnson*, 361 F.2d 73 (D.C. Cir. 1966), *cert. denied*, 385 U.S. 929 (1966). Thus, lawsuits filed by terrorists under the ATCA would quickly be disposed of by the district courts.

In the wake of the September 11th attacks, Congress undertook a broad reorganization of the government's law enforcement powers. *See* USA PATRIOT Act, Pub. L. 107-56, 115 Stat. 272 (2001). Had Congress believed that any statute, including the ATCA, could impede the war on terrorism, it would have repealed the statute in its overhaul of our laws. To the contrary, Congress has ignored recent calls by lobbyists to repeal or amend the ATCA. *See, e.g., Big Oil's Dirty Secrets*, ECONOMIST, May 10, 2003, at 53, 54; Daphne Eviatar, *Profits at Gunpoint: Unocal's Pipeline in Burma Becomes a Test Case in Corporate Liability*, NATION, June 30, 2003, at 16. By declining to repeal the ATCA, even after the September 11th attacks, Congress once again affirmed its confidence in the district courts to fairly adjudicate human right claims on a case-by-case basis pursuant to the ATCA. This Court would exceed its proper role were it to repeal a cause of action that has existed for well over 200 years to protect foreign policy concerns that Congress apparently does not share. *See Barclays Bank PLC v. Franchise Tax Bd. of Cal.*, 512 U.S. 298, 329 (1994).[15]

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14. Congress has consistently favored candid, public scrutiny of nations' compliance with fundamental human rights to be an integral part of U.S. foreign policy. To that end, Congress has directed the State Department to comprehensively review and report annually on the status of internationally recognized human rights in virtually every nation in the world, 22 U.S.C.A. § 2151n; 19 U.S.C.A. § 2464, and on the status of religious freedom in individual countries. 22 U.S.C.A. § 6412. Congress has also denied funding to countries that commit a consistent pattern of gross violations of internationally recognized human rights. 22 USCA § 2151n, 22 U.S.C. § 2304. In the 2002 State Department Reports, the United States comprehensively evaluated foreign nations' policies on terrorism. Thus, it is disingenuous to claim, as Petitioner does (Brief for Pet. at 34-43), that

permitting suits by alien victims of terrorist attacks would impede executive foreign policy. *See Doe v. Unocal Corp.*, 963 F. Supp. 880, 893 (C.D. Cal. 1997) (when "the coordinate branches of government have already denounced the foreign state's human rights abuses, it is hard to imagine how judicial consideration of the matter will . . . substantially exacerbate relations. . . .").

15. In *Barclay's Bank*, this Court disavowed any competence to determine whether a state law interfered with U.S. foreign relations or whether conversely Congress had decided to allow the state to act. 512 U.S. at 324-31. Noting that "[t]he judiciary is not vested with the power" to decide how

The act of state and political question doctrines permit courts, on a case-by-case basis, to dismiss specific claims where adjudication would exceed the judiciary's proper role. Petitioner's suggestion that this Court should preclude all ATCA claims based on alleged foreign policy effects, Br. for Pet. at 34-43, however, conflicts with this Court's well-established separation of powers principles. Courts ordinarily have the obligation to decide a properly presented case, even where the controversy may potentially implicate foreign affairs. *See W.S. Kirkpatrick & Co. v. Environmental Tectonics Corp.*, 493 U.S. 400, 409-10 (1990). Courts cannot "shirk this responsibility merely because [a] decision may have significant political overtones," *Japan Whaling Ass'n v. American Cetacean Soc.*, 478 U.S. 221, 230 (1985), or because it may embarrass foreign governments. *W.S. Kirkpatrick & Co.*, 493 U.S. at 409-10. This Court has never declared that the mere possibility certain cases will impact foreign affairs grants it the authority to wholly foreclose a cause of action created by Congress. Not surprisingly then, courts have unanimously rejected the argument Petitioner and his *amici* make now: that ATCA claims are inherently non-justiciable. *See, e.g., Alvarez-Machain v. United States*, 331 F.3d 604, 614 (9th Cir. 2003); *Abebe-Jira v. Negewo*, 72 F.3d 844, 848 (11th Cir. 1996).[16]

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to balance the competing concerns involved, *id.* at 328, the Court presumed that Congress' inaction evinced "a willingness to tolerate" a state law that had engendered considerable diplomatic protest from other nations. *Id.* at 324 n.22, 327. If Congressional inaction implies tolerance of state intrusion into foreign relations, surely Congressional inaction demonstrates toleration of purported foreign policy effects of a statute Congress itself enacted. *Id.* at 328.

16. As existing justiciability doctrines clearly do not permit the wholesale evisceration Petitioner and his supporting *amici* seek, Petitioner claims that the "same concerns" underlying the act of state doctrine counsel in favor of

A blanket preclusion of the claims of deserving plaintiffs would have a profound impact on the war on terrorism. Repeal of the ATCA would mean that aliens injured by terrorists attack within the U.S. could not sue the terrorists in our courts. It would also mean that alien victims of terrorists acts that occur abroad could not sue terrorists who are present on our shores. It would be disingenuous of our government to close its courts to foreign nationals harmed by terrorists at a time when the United States seeks global cooperation to fight terrorism. This is especially so, as the U.S. expressly claims the right to prosecute terrorists who use bombs in the U.S., even if the victim is an alien. 18 U.S.C. § 2332f(b)(1)(F).

Just as the government has the right to pursue and punish those involved in terrorist acts in the U.S. against alien victims, the victims themselves should have civil remedies in U.S. courts. Disparate treatment of alien victims of terrorist attacks trivializes the alien victims' suffering and signals that they do not deserve justice. Alarmingly, it gives the impression that the United States is committed to ending terrorism only within our borders, and not throughout the world. Such an impression severely compromises the U.S.'s moral stature in its efforts to fight terrorism. It simply cannot be perceived by our allies that we are unconcerned with protecting their nationals.

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that result. Br. for Pet. at 37. This Court, however, has rejected the notion that "the underlying policies are a doctrine unto themselves, justifying expansion of the act of state doctrine (or, as the United States puts it, unspecified 'related principles of abstention') into new and uncharted fields." *W.S. Kirkpatrick*, 493 U.S. at 409.

C. Congress Has Repeatedly Sanctioned the Courts' Interpretation that the ATCA Creates a Cause of Action.

The First Congress passed the ATCA as part of section 9 of the Judiciary Act of 1789, which established the court system of our fledgling nation and created federal jurisdiction over issues of national importance, including suits brought by aliens.[17] *See Randall, supra*, at 12; David Cole et al., *Interpreting the Alien Tort Statute: Amicus Curiae Memorandum of International Law Scholars and Practitioners in Trajano v. Marcos*, 12 HASTINGS INT'L & COMP. L. REV. 1, 14 (1988). The ATCA was intended to help secure the credibility of our nation within the international community at a time when the United States was young and weak. "Respect for international law was seen by the founding and early generations of the Republic as being an essential ingredient in the legitimacy of the nation." David J. Bederman, *National Security: Globalization, International Law and United States Foreign Policy*, 50 EMORY L.J. 717, 719 (2001).

Courts and legal scholars have gleaned the purpose for the passage of the ATCA from the concerns and beliefs of our leaders at the time it became law. *See Tel-Oren*, 726 F.2d at 782-84 (Edwards, J., concurring); *Filartiga*, 630 F.2d at 887-88; *see generally* Anne-Marie Burley, *The Alien Tort Statute and the Judiciary Act of 1789: A Badge of Honor*, 83

17. Our early leaders' desire to uphold the law of nations is also reflected in the debates at the Constitutional Convention. *See* Kenneth C. Randall, *Federal Jurisdiction over International Law Claims: Inquiries into the Alien Tort Statute*, 18 N.Y.U. J. INT'L L. & POL. 1, 12 (1985). John Jay declared that "committing such questions to the jurisdiction and judgment of the courts appointed by and responsible only to one national government cannot be too much commended." THE FEDERALIST No. 3, at 43 (John Jay) (Clinton Rosseter ed., 1961).

AM. J. INT'L L. 461 (1989); Anthony D'Amato, Comment, *The Alien Tort Statute and the Founding of the Constitution*, 82 AM. J. INT'L L. 62 (1988). The Founding Generation knew there were consequences for failing to offer adequate judicial remedies to aliens injured by violations of international law. *See, e.g.*, Burley, *supra*, at 487; Randall, *supra*, at 12. By granting aliens access to a functioning court system, the Founders demonstrated to the international community that the United States would protect the interests of citizens of other nations in a fair manner. The Founders also ensured that "individuals who flouted international law would find no quarter in the United States." Burley, *supra*, at 487. These concerns are as valid today as they were in 1789.

Ignoring this legislative history, the Solicitor General curiously claims that the ATCA was only meant to apply to acts within the territory of the United States. Br. for the U.S. at 55. Even assuming *arguendo* that such a reading of the ATCA were correct (which it is not), this would not preclude alien victims of terrorist attacks from seeking redress when attacks take place in the United States. Yet the Solicitor General asks this Court to deny even this opportunity for alien victims and their survivors to recover for their loss.

The Solicitor General further argues that, at best, the district courts can hear disputes arising from matters on the high seas. *See* Br. for the U.S. at 34. It impliedly asks this Court to find that the ATCA only applies to international law as of 1789. This simply does not follow. The ATCA's language is not aimed at violations of international customary law or treaties of the United States regarding acts upon the high seas; or treaties involving technology of the 18th Century. By its plain meaning, the Alien Tort Claims Act contemplates *any* "violation of the law of nations or a treaty of the United States." 28 U.S.C. § 1350. The statute's language clearly contemplated that courts would apply international law as it evolved. The Hague Convention of

1970 (codifying the international condemnation of aircraft hijacking) is as equally binding on the United States as was the Treaty of Paris of 1800, 7 Bevans 801 (expired July 31, 1809) (an agreement between the U.S. and the Empire of France to keep pirates out of their respective ports and punish any citizens who gave pirates aid). *See* U.S. CONST. art. VI, cl. 2 (treaties are "the supreme Law of the Land"). The nature of international law is that it must be examined "not as it was in 1789, but as it has evolved and exists among the nations of the world today." *Filartiga*, 630 F.2d at 881 (citing *Ware v. Hylton*, 3 U.S. (3 Dall.) 199, 1 L. Ed. 568 (1796) (distinguishing between 'ancient' and 'modern' law of nations)). Every court that has considered the question has so held.

Congress reaffirmed the ATCA's continued viability when in 1991 it passed the Torture Victims Protection Act, which it modeled after the ATCA. Congress noted that the ATCA "has other important uses that should not be replaced," and that it "should remain intact to permit suits based on other norms that already exist or may ripen in the future." H.R. Rep. 102-367(I), at 4 (1991), *reprinted in* 1992 U.S.C.C.A.N. 84, 86. The Solicitor General misleadingly remarks that Congress twice chose not to alter the ATCA's language, citing only to Congress's consideration of the statute in 1911 and 1948. Br. for the U.S. at 18-19. The Solicitor General fails to discuss that Congress also reaffirmed the ATCA in 1991. The members of Congress in 1991 acted in accord with the wishes of the members of Congress of 1789, 1911, and 1948, recognizing that the inexorable march of time permits courts to apply evolving norms of international law in an ever-changing world.

CONCLUSION

Our nation is engaged in a global war on terrorism. Congress enacted the ATCA so that foreign nationals would have the authority to seek redress for violations of the law of nations, which the attacks of September 11th most certainly were. The efforts to defeat groups like Al Qaeda, and to shatter their support networks, will not succeed with half-hearted efforts to find them and seize their assets. The Solicitor General, by asking this Court to unjustly deny alien victims of terrorist attacks the right to a civil remedy, undermines the very goals he purports to protect. The ATCA is an effective weapon for pursuing those responsible for the attacks of September 11th and holding them responsible for their murderous actions. Thus, this Court should not judicially repeal the ATCA, nor should it overrule the twenty-five years of case law that holds the ATCA creates a cause of action.

Respectfully submitted,

PENNY M. VENETIS
Counsel of Record
Constitutional Litigation Clinic
Rutgers School of Law - Newark
123 Washington Street
Newark, NJ 07102
(973) 353-5687
Counsel for *Amici Curiae*

February 27, 2004

Appendix A

List and Descriptions of Amici Curiae

List of Amici Curiae

Barry Amundsen	(brother of Craig Amundsen)
Kimi Beaven	(wife of Alan Beaven)
Kelly Campell	(sister-in-law of Craig Amundsen)
Charles Greene	(brother of Donald Greene)
Douglas F. Greene	(brother of Donald Greene)
Regan Grice-Vega	(wife of Peter Vega)
John Leinung	(father of Paul Battaglia)
Elaine Leinung	(mother of Paul Battaglia)
Alissa Rosenberg-Torres	(wife of Luis Torres)
Paula Shapiro	(mother of Eric Eisenberg)
Jack Shapiro	(grandfather of Eric Eisenberg)
Dorothy Shapiro	(grandmother of Eric Eisenberg)

Descriptions of Victims

Craig Amundsen worked as a computer graphics illustrator for the Army's deputy chief of staff for personnel command at the Pentagon. A husband and father of two children, Mr. Amundsen, age 28, is also survived by family and friends in Missouri and Iowa, where he was raised.

Paul Battaglia started off as an intern during high school with Marsh & McLennan, which he parlayed into a full-time position as risk consultant upon graduation from SUNY Binghamton. He was 22 years old when he died.

Alan Beaven, age 48, was killed on flight 93 in Pennsylvania while trying, with other passengers, to take control of that flight after it was hijacked. A citizen of New Zealand, Alan Beaven was an accomplished environmental lawyer who specialized in clean-water cases. Before his death, Mr. Beaven was about to try one last case before taking a year-long sabbatical. Mr. Beaven had three children.

Eric Eisenberg, employed by Aon, was 32 years old when he died. He was an expert computer technician. His mother, who spoke with him after the first plane hit the tower, believes he stayed behind to help evacuate other people.

Donald Greene died on Flight #93, which crashed in Pennsylvania. The CEO and first vice president of Safe-Flight, an aviation company based in New York, Mr. Greene was a licensed pilot. He was the father of two children.

Luis Torres was, briefly, a paratrooper in the Columbian military. A native of Colombia, he came to the U.S. via Mexico in the late 1980's. He started a new job as a senior currency broker at Cantor Fitzgerald on September 10, 2001.

Peter Vega was a firefighter with Ladder Company 118 in Brooklyn. A husband and father, Mr. Vega, age 36, was married for five years before his death. He was a veteran of the U.S. Air Force.

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